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Preventive measures and their role in combating criminal phenomena

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Abstract

Within the realm of criminal legislation, precautionary measures are implemented as a type of criminal punishment with penalties, to rehabilitate the guilty individual. This function is common to both punishments and measures, to facilitate and support the rehabilitation of the offender, reintegrating them into society, and eliminating the barriers that impede their reformation from a criminal lifestyle. The credit for the inception of precautionary measures is attributed to their efficacy in countering criminal activities.

The fundamental purpose of preventive measures is to address the criminal risk presented by the individual. Precautionary measures aim to avoid harm; however, they may lead to the restriction of one's freedom. Instead, their primary concentration lies on the personal peril presented by the wrongdoer. Hence, the calculation of these measures is focused on the forthcoming events rather than the past, to avert those who present a threat from engaging in future criminal activities. The objective is to eradicate this peril and safeguard society from its detrimental effects, hence assigning sanctions a role in accomplishing targeted deterrence.

Preventive measures are implemented on the individual criminal, irrespective of the broader goals of deterring others and ensuring justice, which focus solely on the punishment and do not include additional measures. Due to the specific criminal threat and the ever-changing nature of preventive measures, they must be taken into account while making a judgment. Identification and determination can only occur at the moment of pronouncing the punishment, and the relevant text at that point must be strictly enforced, disregarding the text that was in effect at the time of committing the offense.

The judge has the power to exercise discretion in selecting the suitable course of action, considering the changing level of threat presented by the guilty person and the surrounding circumstances. This is done to guarantee parity in the objectives of both penalties and measures, given that both are types of criminal sanctions in various legal systems.

Keywords: Precautionary measures, crime, criminal risk, criminal phenomenon, criminal personality

Introduction

The criminal phenomenon occupies a prominent position in the realm of legal studies because combating crime and deviance is regarded as a paramount concern for states. The stability of public life, economic development, and social advancement are contingent upon individuals coexisting harmoniously within society. Jurists and legal experts have always emphasized the notion of crime prevention as a more effective method to ensure the safety and stability of both individuals and society, given the inherent danger that crime poses to the community and mankind.

The prevention of the criminal phenomena is a holistic approach that extends beyond individual criminals or specific crimes. It involves ongoing efforts to decrease the occurrence of crime by preventing both initial offenses and subsequent ones. This is accomplished by mitigating the contributing causes and implementing suitable interventions in the given scenario. Conversely, the failure of policies that solely rely on punishment and deterrence is one of the factors contributing to the proliferation of criminal activities. Many legislations have thus reevaluated their approach to handling criminal behavior by adopting precautionary measures, which focus on prevention and rehabilitation, while still recognizing the importance of suppression and deterrence.

Upon reintegration into society, it becomes evident that there has been a proliferation of aberrant behaviors. Thus, it was imperative to construct a comprehensive framework to evaluate the impact of preventive measures on these events in all its manifestations. This is consistent with contemporary criminal ideology that aims to promote reform and rehabilitation.

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The Significance of Research

The importance of research is apparent through three crucial factors. From a legislative perspective, the significance of research becomes evident as criminal policy revolves around the principle that punishment should only be administered by a lawful statute. Legislators have a crucial role in establishing punitive policies in a country. These measures are essential for combating crime, restraining the threat posed by criminals, and safeguarding society from the repetition and future incidence of crimes. This feature acts as a crucial focal point.

From a different perspective, criminal legislation embraces the notion of reforming and rehabilitating the accused, utilizing measures as a concrete method of refining and treating the criminal's personality. The measures strictly adhere to these principles, so affecting the legislator's policy and planning for criminal policy and crime prevention.

From a scientific standpoint

Studies in criminology have shown that measures play a crucial role in current criminal policy, especially in terms of their preventative and therapeutic functions. From a scientific perspective, these studies investigate the criminal conduct of the offender to prevent harm and discourage future offenses. While certain measures may cause discomfort, this is not their main purpose and is unintended. Measures are closely connected to the existence or absence of hazards.

From a pragmatic standpoint

Measures aimed at bolstering societal faith in punishment serve to promote authentic rehabilitation of the offender and prevent their exposure to circumstances that may exacerbate their criminal inclinations, such as prisons. Furthermore, these measures specifically target the offender's psyche from within, addressing the underlying causes of criminal thought.

Research Problem

The main issue pertains to the efficacy of crime prevention efforts, despite notable progress. The proliferation and variety of criminal activities have escalated, presenting a peril to the very foundation of contemporary civilizations. This highlights the insufficiency of conventional punitive measures in dealing with crime, as societies want solutions that can proactively prevent and discourage criminal activities. The core research issue of this work is encompassed in a fundamental inquiry: Do measures effectively reduce the proliferation of criminal phenomena when used as one type of criminal sanction?

This leads to three sub-questions

1. What is meant by precautionary measures, and what are their characteristics and conditions?
2. What does the criminal phenomenon mean, and what is its impact on punitive policies and measures?
3. What are the types of measures, and how are they implemented?

Research Methodology

In our study, we adopted the descriptive-analytical methodology. We analyzed the general principles governing precautionary measures by presenting their concepts and the conditions for their application.

Research Structure

We divided this research into two sections. The first section is dedicated to exploring the research introduction with concepts and characteristics. In the second section, we focus on the role of measures, their types, and the method of implementation. We adhered to the binary division, where each section has two requisites, and each requisite has two sub-requisites.

First Section: Concepts

To properly communicate its content, any research must first clarify the language phrases that are employed to explain the meaning of legal activities. Hence, it is imperative to thoroughly examine these terms from a linguistic and terminological perspective to ascertain their legislative and practical meaning. This research has been broken into two prerequisites. The first is focused on establishing preventive measures and criminal phenomena. In regards to the second requirement, which arises from the importance of measures, we shall examine their attributes and the objectives of precautionary measures.

First Requisite

Definition of Precautionary Measures and Criminal Phenomena

Preventive measures are implemented to address the criminal phenomena by employing a series of procedures and tactics that target the underlying threat within the offender's mentality. These tactics are based on the notion of aiming to alter the offender's mindset rather than pursuing revenge. This notion has undergone successive stages of development while retaining its present configuration.

Roman laws had provisions that addressed preventative measures by taking into account certain events and barring those who posed a threat, even if they were outside the province. Islamic law incorporates numerous preventive measures, including the prohibition of individuals with mental illness from socializing with others. Additionally, there are later procedures in place, such as the system of banishment. The Quran provides evidence that those who engage in warfare against Allah and His Messenger and actively promote corruption on earth, are subject to severe penalties, including death, crucifixion, amputation of limbs, or exile from the land. For them, this is considered a shameful act in the present life, and they will face a severe penalty in the afterlife. The verse referenced is Quran 5:33. Gaining a comprehensive understanding of the criminal phenomena is crucial due to its intricate connection with numerous legal concepts. Furthermore, the notion of crime itself is a phenomenon. We shall examine the definitions of preventive measures and the criminal phenomenon in two distinct subsections.

First Subsection

Definition of Precautionary Measures

The Iraqi legal system includes laws that focus on preventative measures, as exemplified in Article 103 of the Iraqi Penal Code. These measures might be likened to the legal definitions in jurisprudence, which view them as a collection of therapeutic procedures established by society through the law to treat the underlying criminal tendencies of the offender. The objective is to deter the perpetrator from engaging in further criminal behavior.

These measures are legally established procedures designed to mitigate the personal threat presented by criminals and safeguard society. Precautionary measures, as defined by legal scholars, refer to the efforts undertaken by a court to address the imminent threat posed by a criminal, to safeguard the individual from harm.

Precautionary measures are legal sanctions imposed by a judge on individuals whose criminal threat has been demonstrated, to ensure public safety. The objective is to safeguard society from the incidence of criminal activities. It can also be described as regulations established by lawmakers to control the potential criminal threat inherent in the offender's character, suggesting the likelihood that the individual may have the intention to commit a crime.

During our examination of legal documents, we discovered the implementation of preventive measures in multiple legal texts. These measures can either curtail freedom, as seen in the detention in a therapeutic facility (Article 105 of the Iraqi Penal Code), or strip individuals of their rights, such as the removal of guardianship, custody, and trusteeship (Article 111 of the Iraqi Penal Code), or impose material obligations, such as the requirement to exhibit good behavior (Article 118 of the Iraqi Penal Code).

Moreover, according to the Iraqi Penal Code, preventative measures apply to all penalty requirements. Article 1 indicates that precautionary measures that are not established by law cannot be enforced. Furthermore, Article 5 explicitly states that preventive measures are exclusively applied under specific circumstances and by the parameters prescribed by law. The regulations concerning penalties, which encompass their non-retroactive nature and the utilization of the most advantageous legislation for the defendant, are also applicable to preventative measures.

Summarizing, according to the legal interpretations and position of Iraqi criminal law, precautionary measures center around three key aspects: the first pertains to the handling of the offender's character, the second concerns the principle of legality, and the third concentrates on future prevention and safeguarding society from potential threats to its security.

Second Branch

Definition of Criminal Phenomenon

Given that crime is a more generally used phrase, the unfamiliarity of the term "criminal phenomenon" can be clarified by providing linguistic and terminological explanations of the word "phenomenon." Next, a differentiation will be established between it and certain analogous concepts.

From a linguistic perspective, the Arabic language implies that something "appeared" or "manifested" after being concealed, becoming noticeable on the wall, or getting recognized. Within the linguistic marvel of the Quran, phrases such as "if they become evident to you, they will stone you" and "clearly evident" in the context of two clothing, signify the act of becoming visible and the presence of resemblance. Furthermore, the phrase "helped openly" refers to the act of assisting someone.

From a language perspective, the criminal phenomenon might be described as a "hidden crime that becomes evident, with each instance closely resembling the others."

The terminological meaning of the criminal phenomena, as described by criminal research professionals, refers to the repetitive occurrence of a certain collection of crimes in

particular areas, employing a consistent criminal approach, during consecutive periods. Crime specialists categorize it as the "recurrence of unlawful activities with a resemblance in approach, whether happening within a single timeframe or in successive timeframes within one or more geographical regions, irrespective of the connection between the offenders.

The Second Section

Characteristics and Objectives of Precautionary Measures

Once the purpose and legal significance of precautionary measures have been clarified, along with the three key aspects they encompass - namely, the criminal risk posed by the offender's personality, legal legitimacy, and societal protection - all falling under the scope of therapeutic and preventive precautionary measures, it becomes crucial to examine the characteristics and objectives that strive to accomplish these aims. Hence, we will endeavor to clarify the attributes and goals of preventive measures in two subsequent parts.

The First Section

Characteristics of Precautionary Measures

The characteristics of precautionary measures can be classified into two types: the first type relates to procedural aspects, while the second type is associated with substantive aspects. Therefore, we will discuss each type separately.

Firstly: Substantive Characteristics

Precautionary measures are a form of protection and are inherently linked to criminal hazards, as described before. The relationship between preventive measures and criminal hazards is not just correlated but also intricately interconnected, such that an escalation in criminal danger impacts the characteristics, length, and approach of the precautionary measure. On the other hand, when the criminal threat is eliminated, the preventive step is also removed.

It is essential to comprehend those preventative measures go beyond punishment and encompass the domains of rehabilitation and reform. Furthermore, these actions are not aimed at addressing the specific crime, but rather the inherent threat posed by the offender through the perpetration of an illegal conduct. Preventive measures serve as a remedy to tackle the criminal threat, to restrain it, and to safeguard society against potential future offenses committed by the same person.

Furthermore, all of these actions are in strict compliance with the existing legislation. Precautionary measures are implemented by the notion of legality. The legislation stipulates the specific form of preventive measure, outlines the mechanism by which it is carried out, and establishes the criminal risk upon which the precautionary measure is founded. The purpose of this provision is to protect persons from the misuse of power, and even a judge is not allowed to impose it unless it is explicitly stated in the legislation.

The consensus is reflected in the records of the fourth session of the Penal Code, which took place in Baghdad in 1969. One of the key outcomes of this session was the establishment of the concept that states: "No precautionary measure can be taken without a corresponding legal provision, and no precautionary measure can be taken without the existence of a crime." Article 5 of the Iraqi

Penal Code underscores this point by stating that precautionary measures can only be enforced by the situations and criteria specified by the law.

Precautionary measures not only comply with legal requirements but also uphold the ideal of equality. If the prerequisites are met, they are not selectively applied to one criminal over another. The principle of preventive measures emphasizes their distinctiveness and significance. In addition, preventative measures do not serve as precedents in case of a recurring crime. They are exempt from amnesty and are not subject to criminal liability. This enables the potential use of preventive measures on individuals who are mentally ill or underage, as the justification for such measures is the potential risk of criminal harm, rather than the actual commission of a crime.

Secondly: Procedural Characteristics

Although preventive measures have a therapeutic and rehabilitative purpose, they cannot be enforced by any non-judicial body, given their judicial nature. The legal authorities will only enforce them if their criteria are satisfied. This indicates that no governing body has the power to enforce preventive actions on an individual, even if it uncovers the criminal threat within their character. Several legislations, like the Iraqi law, strongly underline this fact.

Precautionary procedures are specific to individuals who present a criminal threat and are implemented on a personal basis. The purpose of these measures is pragmatic. Furthermore, a thorough and precise evaluation of the offender's character and societal context must occur before the rendering of the verdict. This inquiry enables the court to appropriately evaluate the nature and severity of criminal risk.

Furthermore, the court's ruling to implement preventive measures must be rapidly enforced to swiftly reduce the potential danger posed by the criminal. Rapidity is crucial, and ongoing evaluation of the measures is imperative. Preventive measures are inherently exposed to criminal threats posed by offenders, and their effectiveness is strongly tied to the presence or absence of these threats. The measures can be modified during their implementation to ensure their ongoing effectiveness in addressing the evolving criminal threat they are targeting.

The Second Section

Objectives of Precautionary Measures

Preventive measures are strategies used to proactively address crimes, to minimize their frequency and extent. This approach deviates from the objective of punishing the offender and discouraging society by imposing sanctions. The primary aim of precautionary measures is to fundamentally address the reform, treatment, and rehabilitation of the criminal. This has both a personal impact and a collective goal by safeguarding the community against criminal activities that jeopardize its security and stability.

Now, we shall address the process of rehabilitating the offender and safeguarding society from severe criminal occurrences. The primary goal of precautionary measures is to safeguard society against criminal activities by directly addressing the potential threat provided by specific individuals. This is done to prevent the occurrence of the anticipated crime by mitigating the risks associated with the

acts of these individuals. Specific deterrence is a common objective of both preventative measures and punishment, as they both seek to prevent crime by having a deterrent impact on individuals.

As previously said, preventative measures are tailored to the individual's mentality to eradicate the internal criminal threat. The potential criminal threat emerges from multiple factors, necessitating a wide range of solutions to effectively address the situation. Therapeutic interventions are employed to address the criminal risk associated with mental or psychological disorders, whereas corrective interventions target individuals whose risk arises from a lack of moral principles, as well as external factors that contribute to their exposure to this risk. Consequently, by implementing procedures that exclude them from certain settings, we can effectively limit or prevent the development of this phenomenon.

To confront criminal danger, it may be necessary to deprive the offender of the material means that enable them to commit new crimes and harm society. In such cases, precautionary measures may take the form of confiscating tools that are instrumental in committing crimes or hazardous items in themselves. Alternatively, measures could involve closing the offending institution or depriving the individual of the right to practice a profession. One commonly cited example is the suspension or revocation of a driver's license for individuals who repeatedly engage in traffic accidents or drive under the influence of alcohol.

Section Two

The Role of Precautionary Measures in Combating Crime and Their Conditions

Crime is an inherent aspect of human society since their creation, being a worldwide phenomenon. It is an innate characteristic of human conduct, and no culture is exempt from it. Societies consistently endeavor to prevent crime by enacting laws, which in turn give rise to precautionary measures as a kind of criminal punishment. These tactics target the concealed criminal threat within the perpetrator. The penalties differ based on the level of criminal risk and the need to provide treatment and rehabilitation for the offender. Various forms of preventative measures exist, and their implementation is contingent upon particular conditions stipulated in criminal legislation, in accordance with the criminal policy of each country, whether in execution or imposition. Hence, we shall divide our discussion into two sections: the initial portion will cover the many categories of precautionary measures, while the subsequent section will delve into their implementation and requirements.

Section One: Types of Precautionary Measures

Indeed, preventive measures are categorized based on their purpose in addressing criminal risk, as noted before. Hence, they differ from one perpetrator to another. Classifications can be established according to their topic matter or aims. They can also be classified based on the seriousness of the offenders or the discretionary authority of the judiciary in their application. Based on our observations, the Iraqi legislator has implemented comprehensive preventative steps. Furthermore, certain measures, such as police surveillance and confiscation, serve both as precautionary measures and sanctions.

Branch One

Personal Measures

The text of Article 104 of the Iraqi Penal Code specifies the types of precautionary measures, stating that they can either be restrictive of freedom, depriving of freedom, restricting rights, or material. Therefore, personal measures in Iraqi law are divided into two types: measures related to freedom, including those that restrict or deprive of freedom, and measures related to rights, which are restrictive of rights. We will discuss them sequentially.

Firstly: Restrictive Measures or Deprivation of Liberty

Freedom is an outcome of human cognition and existence. When rational thought is disrupted by legal and justice factors, it may be necessary to limit or remove freedom to address the issue. In such instances, the person may be segregated or expelled from the vicinity where they could potentially contribute to an escalation in criminal peril. This results in a range of measures that are determined by the level of threat posed by the offender. According to Article 105 of Iraqi legislation, individuals with mental diseases can be punished by being confined to a therapeutic asylum in a hospital or clinic. The incarcerated individual remains in the institution until all variables that impair their perception or discernment, such as deviant or mentally ill offenders, are identified and remedied.

The law did not specify any measures involving deprivation of liberty beyond what was mentioned earlier. However, it defined measures that restrict freedom in the provisions of Articles 106, 107, and 108 of the Penal Code.

Measures that restrict freedom may not always result in the loss of liberty, but instead impose specific constraints as established by legislation in accordance with the punitive policy of the country. Upon analyzing Iraqi legislation, it becomes evident that it forbids individuals with alcohol addiction from accessing bars, thereby subjecting them to police surveillance and imposing limitations on their place of residence. The word "residence restriction" pertains to a regulation that curtails liberty and is imposed on individuals who are forbidden from entering certain locations. In Iraq, the law prevents a convicted individual from entering a certain location for a period of one year following the completion of their sentence. This restriction cannot exceed the length of the imposed penalty and, in any circumstance, cannot exceed five years. This tactic is commonly employed in instances of homicide or physical assault, when the designated location is where the victim or their kin are present, with the objective of deterring the repetition of a criminal act. Nevertheless, there exists an intricate exemption pertaining to the offender's health or social conditions, which may prevent them from being prohibited from their place of employment or a facility where they receive medical care.

Police monitoring is a measure that imposes limitations on the offender and is put in place to deter them from engaging in additional criminal activities. At times, the laws classify it as a supplementary sanction, at other times as a secondary sanction, and occasionally as a measure. As to Iraqi legislation, a measure is classified based on its inherent characteristics, as outlined in Article 108, whereas it is categorized as a penalty based on intention, as per Article 99. The lawmaker has defined it as a supplementary penalty for specific offenses, such as cash counterfeiting, and as a precautionary measure in some instances. Within this

particular situation, the court possesses discretionary authority for a duration of one year.

Secondly: Measures Depriving Rights

Articles 111-116 of the Iraqi Penal Code pertain to these measures. There exist three categories: "retracting guardianship," "retracting parental authority," and "retracting trusteeship." As per the Iraqi penal law, the power to supervise individuals who are unable to handle their affairs can be taken away by the appropriate authority if the person in question is no longer capable of fulfilling that role, as outlined in Article 118.

The law also includes a provision for "deprivation of rights," which is a discretionary action. The execution of this activity is contingent upon getting a license from a legally authorized body for professions, trades, or activities that necessitate such authorization, such as medicine and law. Furthermore, the individual must be convicted of a felony or a crime committed by breaching the responsibilities of their profession, occupation, or trade, resulting in a sentence of at least 6 months of imprisonment.

Branch Two

Preventive Measures

The Iraqi lawmaker cited the preventative procedures outlined in Articles 117-123 of the Iraqi Penal Code. As per Article 117, confiscation is obligatory and encompasses both physical seizure and removal of things, regardless of ownership, due to their inherent hazardous nature. This measure is taken to mitigate the potential threat they cause, as stated in sections 125-126. The legislator also highlighted the additional preventive measure of practicing good behavior, which deviates from the provisions outlined in Articles 321-324 of the Code of Criminal Procedure. This measure serves as a supplementary precautionary action to the penalty.

Article 118 grants the judge the power to ascertain the amount of the undertaking in the second paragraph. This determination is based on the circumstances submitted to the judge while considering the financial status of the convicted individual. The lawmaker did not explicitly stipulate that the amount must be in the form of currency, but it can encompass any item or asset with inherent worth. According to Article 119, the lawmaker mandated that individuals who have been found guilty of a crime or offense related to life, property, or public morals must sign a commitment to behave appropriately when the judgment is issued.

In addition, there is a punishment for terminating the legal entity, as mandated by the legislator, which involves two actions against the legal entity: suspending its operations and dissolving it. Article 123 affords the court the authority to impose and enforce this discretionary preventative measure on legal entities.

The Second Section: Implementation of Precautionary Measures

Crime presents a genuine risk to nations and jeopardizes their security. To safeguard the community from harm, it is imperative to examine appropriate methodologies that are tailored to each specific scenario, while considering the various circumstances. In order to effectively combat crime, it is crucial to analyze the psychology of the convicted individual, taking into account the objectives of preventative

measures in all their forms. The characteristics that contribute to an elevated criminal risk for individuals are ascribed to mental, psychological, physical, or neurological influences.

The implementation techniques of precautionary measures employ a scientific approach, using their unique qualities to enhance precision throughout execution. They correspond to the development of the individual's personality, particularly following the initiation of treatment and its influence on them. Preventive measures are carefully enforced, with a focus on rehabilitating the guilty individual, recognizing them as someone who made a mistake due to external factors, be it social or personal.

Branch One

Conditions for Implementing Precautionary Measures Crime

The dominant viewpoint in legal theory can be traced back to the belief that a previous offense must be established before imposing punishments and implementing preventive actions. This perspective challenges the notion supported by the Italian jurist Lombroso and others, which asserts that criminal behavior is inherent in individuals from birth or by nature. It suggests that it is possible to take preventive action against someone who has not yet committed a crime. The legislator views the requirement of a prior criminal offense as a means to ensure the protection of freedoms and the administration of justice in implementing measures against the offender. This requirement is based on assessing the individual and societal risk posed by the offender, to prevent them from engaging in further illegal activities.

Criminal risk occurs when an individual engages in the actual act of committing a crime. Hence, it is illogical to enforce and carry out a preventive action on an individual who has not engaged in any criminal activity. Nevertheless, certain legislations are established according to the gravity of the offense to enforce preventive actions. In the Iraqi Penal Code, it is specified that the preceding offense must attain a specific degree of severity for most preventative measures outlined in the law to be applicable. In addition, it categorically disregards actions such as guardianship, withdrawal of guardianship, and revocation of a trading license, deeming them as infringements on individual rights. The legislator did not mandate the commission of a preexisting offense for the implementation of these laws. Hence, the legislator aims to justify this requirement as a means of safeguarding public liberties and preempting any infringement upon them. This is achieved by imposing preventive restrictions on individuals with a prior criminal record, in anticipation of their potential future criminal activities.

Criminal Risk

According to Grispini, a criminal risk refers to an individual who has the potential to commit another crime, and it is a crucial requirement for the implementation and enforcement of preventative measures. In addition, Manzini defines it as the act of an individual committing a crime, where there is a likelihood that they may engage in other activities that are also deemed crimes under the criminal code. Based on these definitions, it is evident that criminal risk is exclusively a potentiality. It is founded on the concept of probability or foresight, taking into account that the individual has previously engaged in criminal activity.

The idea of probability is based on the causal connection between multiple circumstances existing in the present and a future event, which determines its degree of accuracy in forecasting the likelihood of that event happening. Probability is determined by examining the contextual and individual aspects that influence a person's likelihood of engaging in future criminal behavior. The determining factor for risk is based on the potential occurrence of a future crime rather than its certainty. Furthermore, criminal risk is a multifaceted notion that depends on the severity of the crime committed. The level of danger presented by the offender is assessed by analyzing the biological and genetic elements that contribute to their criminal behavior.

Regarding the evidential side, establishing criminal risk is difficult due to its inherent psychological nature in the offender who foresees the commission of a future offense. Consequently, the lawmaker has given the judge the power to make decisions based on specific elements or considerations. Based on these elements, the judge might infer the motives that indicate the potential danger posed by the criminal, whether it is connected to the crime itself or the offender, as specified in Article 103/1 of Iraqi law.

Section Two

The Role of Supervisory Judiciary in Implementing Precautionary Measures

The legislator has bestowed upon the court, within their competence and jurisdiction, the responsibility of imposing penalties and enforcing preventative measures. This encompasses the duty of engaging in communication and overseeing those who are under precautionary measures. The judge has the authority to alter the imposed measures in response to the changing hazardous situation and to supervise the implementation and removal of specific measures.

Preventive measures, which are different from punishments, do not have a pre-established period. Precautionary measures may be imposed on individuals who have a mental illness, engage in criminal behavior, or have aberrant psychological circumstances. The judge has the authority to prolong the term of the measure if there is apparent ongoing criminal risk. The judge additionally guarantees the enforcement of fines and oversees the execution of rehabilitative procedures.

The judge depends on reports from pertinent authorities and consistently monitors and monitors the developing perilous condition of the convicted individual. The court oversees and assesses the sentenced individual's adherence to the established terms. Moreover, the judge possesses the power to substitute one metric with a more rigorous one. For instance, if an individual is deemed likely to yield to parental authority, the judge may substitute this with the measure of institutional detention.

The judge actively engages in the implementation of sanctions by personally visiting therapeutic institutions, including those for those with mental illness or those undergoing addiction treatment. Engaging in direct communication with the condemned individual enables the evaluation of their criminal risk progression, as well as determining if it remains or has been mitigated. The judge conducts inquiries into inmates' grievances, upholds their rights by relevant laws and regulations, and renders judgments about their placement or transfer among facilities. This entails the relocation of an individual who

has been found guilty to a psychiatric hospital or any specifically specified treatment institution.

Conclusion

After studying this research, we have reached a set of results and recommendations that can be summarized as follows:

Results

1. Precautionary measures are therapeutic measures imposed by legislators and used by judges to address individuals with criminal risk and to impose treatment on the perpetrator involuntarily.
2. Precautionary measures have distinct characteristics that differentiate them from other forms of criminal penalties. They are linked to criminal risk and are not of a specific duration, and they are not tied to liability.
3. Precautionary measures result in several rehabilitative purposes, as they contribute to the mental, psychological, and social rehabilitation of individuals, achieving crime prevention for the benefit of society. Regarding judgments, they are divided into procedural and substantive aspects.
4. The diversity of precautionary measures contributes to the realization of the interests of individuals and communities. The individual's interest lies in overcoming their illness and acquiring social values to integrate confidently into society through received treatment.
5. The suitability of implementing precautionary measures for each type is essential to ensure the achievement of rehabilitative purposes. Confronting criminal risk in an offender may stem from various reasons and forms, necessitating a diverse approach to implementing precautionary measures to address them. Therapeutic measures are employed to confront criminal risk, which can arise from various causes.

Recommendations

1. The implementation and application of police supervision as one of the precautionary measures are closer to being considered a punishment. Therefore, we hope that the Iraqi legislator specifies it as a discretionary precautionary measure only within Chapter 4 of Section 5 of the Penal Code. This should grant the judge discretionary authority to apply it according to what he deems appropriate, considering the objective circumstances of the crime and the personal circumstances of the convicted person. This aligns with modern criminal policy, which aims at rehabilitation and reform.
2. The guarantee amount for good conduct and commitment, ranging from (20 dinars - 200 dinars) as mentioned in the second paragraph of Article 118/1 of the Iraqi Penal Code, does not align with the current value of the Iraqi dinar. Therefore, the legislator must reconsider it in line with Law No. 6 of 2008. This adjustment is essential to compel the individual to commit to good behavior and compliance by increasing the guarantee amount.

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